

COVID-19 in Autocratic Bulgaria

Radosveta Vassileva

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In a [prior article](#), I explained how the Bulgarian Prime Minister Boyko Borissov was using the COVID-19 emergency in spring 2020 as an opportunity to implement measures curtailing fundamental rights and solidifying his autocracy. Subsequently, Borissov's GERB party enacted questionable amendments to the Law on Health permitting the executive to usurp powers traditionally conferred onto Parliament in Bulgaria's constitutional order. It seems that the only thing which prevented Borissov's GERB party from further abusing the COVID-19 health emergency to assault the rule of law were [mass protests](#) against the corruption of Boyko Borissov and General Prosecutor Ivan Geshev, unrelated to COVID-19, which erupted in July 2020 and which are still taking place. Sadly, depending on how the regular parliamentary elections scheduled for 4 April 2021 go, the state of affairs can quickly change because the road for excesses by the executive has been fully paved.

March 2020: Enter the “State of Emergency”

At the onset of the COVID-19 health emergency in March 2020, the Bulgarian Parliament where the majority is controlled by Borissov declared a [“state of emergency”](#) (*izvunredno polojenie*). As I have [argued before](#), this state is usually associated with the dangers of war and has a military character. In addition, while it has a constitutional basis, there is little guidance in Bulgarian legislation on what it could entail. This permitted Parliament to enact a highly controversial [Law on the Measures and Actions during the State of Emergency](#) on 23 March 2020, which helped Borissov to enhance his police state.

In fact, Borissov played a trick – while the law in question was presented as a piece of legislation pertaining to the state of emergency, it made permanent amendments to other laws in force. In this light, if there is any silver lining, it is related to [Decision 15](#) of 17 November 2020 by the Bulgarian Constitutional Court which declared amendments to the Law on Electronic Communication made via the above Law anti-constitutional. These amendments had allowed authorities “immediate access” to traffic data of users, without judicial oversight. The Constitutional Court had been [seized](#) by the Bulgarian Socialist Party (BSP), an opposition party in Parliament. One may argue that this is, in fact, a chance occurrence because in the Bulgarian constitutional model (see [Article 150 of Bulgaria's Constitution](#)) very few entities have standing to approach this court – most of them are currently under Borissov's direct or indirect control. It is possible for one-fifth of the Members of the Bulgarian National Assembly to seize it, which is what happened here – luckily, BSP fulfilled the threshold requirement and was concerned about this issue.

May 2020: Enter the Mysterious State of “Extraordinary Epidemiological Conditions”

Since Borissov faced vocal and severe criticism about his misuse of the “state of emergency”, he decided to play another trick. Rushed [amendments](#) to the Law on Health enacted without public debate on 12 May 2020 introduced a new concept to Bulgarian law – *izvunredna epidemiologichna obstanovka*, which can be translated as “extraordinary epidemiological conditions (circumstances)”. On 14 May 2020, Bulgaria’s government formally declared this state via [Decision 325](#), thus slipping from a “state of emergency”, which expired on 13 May 2020, to “extraordinary epidemiological conditions” overnight. Essentially, these amendments allow the government to declare such conditions via a decision by the Council of Ministers, which in turn allows the Minister of Health to implement anti-epidemic measures via orders. Since then, the government has kept extending the “state of extraordinary epidemiological conditions” via decisions by the Council of Ministers.

The rushed amendments were immediately challenged for lack of constitutionality by Rumen Radev, the President of Bulgaria, who also has standing to seize the Constitutional Court, as prescribed by Article 150 of the Bulgarian Constitution. Radev’s [main concerns](#) included: 1) The state of “extraordinary epidemiological circumstance” is declared by the executive based on unclear criteria while Bulgaria is a parliamentary republic; 2) There is no limit regarding how long this state can last; 3) Meanwhile, this state allows the restriction of fundamental rights, such as the freedom of movement and the right to work, by the executive through orders.

A Controversial Decision by the Bulgarian Constitutional Court

Regrettably, in [Decision 10 of 23 July 2020](#), the Constitutional Court held that the amendments to the Law on Health were constitutional, which essentially closed all doors to parliamentary review of the COVID-19 measures in a parliamentary republic. As it often occurs, dissenting opinions are often more powerful than the opinion of the majority. In this case, three judges dissented, which showcases some of the flaws of the decision.

In [a joint dissenting opinion](#), judge Raykovska and judge Semov argue that the amendments violate the separation of powers and assault the rule of law. First of all, the judges conclude that “the state of emergency” and “the extraordinary epidemiological conditions” overlap. In addition, they assert that undoubtedly “the extraordinary epidemiological conditions” are a disguised “state of emergency”. However, according to the Bulgarian Constitution, “a state of emergency” is declared by Parliament while the amendments to the Law on Health transferred this prerogative to the executive. In turn, the fact that the Law on Health now allows the government to declare such a state violates Bulgaria’s Constitution because the Constitution necessitates the declaration of a state of emergency through parliamentary legislation. The judges even draw a parallel between this newly found

power of the executive and the communist, Zhivkov Constitution of 1971 which permitted decrees by the State Council to substitute laws enacted by Parliament.

Furthermore, judge Raykovska and judge Semov assert that the criteria for declaring “extraordinary epidemiological conditions” are unclear. Moreover, they also raise awareness that the types of anti-epidemic measures which can be announced have been entirely left to the discretion of the Minister of Health. They further emphasize:

In our view, it is inadmissible for an executive body to be given the right at any time, at its discretion, without clear legal boundaries or frameworks, to declare “extraordinary epidemiological conditions” and to take anti-epidemic measures, relying only on the opinion of the Chief State Health Inspector and a political decision of a Minister, who may not have medical education, and, in this way, to put natural persons residing on the territory of the country in a situation in which they cannot exercise their fundamental rights.

In a [separate dissenting opinion](#), judge Angelov concluded that “the extraordinary epidemiological conditions” are a special case of “the state of emergency”. In this respect, he sides with his other dissenting colleagues by arguing that according to the Constitution such a state could only be declared by Parliament or by the President in case the Parliament is not sitting. Judge Angelov also draws particular attention to the fact that the Council of Ministers can declare such extraordinary conditions solely based on the proposal by the Chief State Health Inspector while there is no clarity about the criteria for this proposal. He is also concerned that there is no definition of “anti-epidemic measures” which means that their content is left at the “unlimited discretion of the executive branch”.

Finally, judge Angelov attacked the majority for using the term “a constitutional dictatorship” which they viewed as the basis of a state of emergency. He argues that this is a doctrinal term with no clear definition which has now been officially introduced to Bulgarian constitutional law thanks to this decision. Even further, he asserts that the definition of the term, which the majority has embraced, is incompatible with Bulgarian law. A key point of concern is that in the majority’s view, powers can be redistributed between the various branches of government in a constitutional dictatorship. Judge Angelov maintains that, in light of Article 8 of the Constitution, which enumerates the types of government branches in the country, the Constitution allows the executive to strengthen or expand the scope of powers of entities within its own branch, but certainly not to swap powers with other branches of government, such as the legislature or the judiciary.

Messy Intervention by the Executive

Not only is the opportunity for parliamentary and constitutional review of the anti-COVID-19 measures now excluded in Bulgaria, but the orders rendered by the government are also extremely difficult to find, messy, and serve as examples of bad drafting.

Relatively late, the government set up a special website dedicated to COVID-19 – <https://coronavirus.bg/>. However, it is only in Bulgarian, which makes it difficult to access for foreigners or for Bulgarian citizens who are not fully literate. For instance, 19% of the Bulgarian Romani above 45 years old [define themselves](#) as illiterate. Moreover, statistics from 2017 show that [32.2%](#) of Bulgarian households do not have access to the Internet. The site does not seem to have a search function either.

Throughout 2020, the government intervention was inconsistent and confusing. For instance, on 12 June 2020, the government issued [an order](#) forbidding nightlife and celebrations with more than ten people. On 13 June 2020, it cancelled this order through another [order](#). The orders are written in a very technical manner which makes them difficult to navigate and comprehend. There is an element of carelessness, too – for instance, at the time of drafting of this article, the text of the [order](#) of November 2020, which extended the state of “extraordinary epidemiological circumstance”, as published on coronavirus.bg, extended the state to 31 January 2020 rather than to 31 January 2021.

Some of the measures do not seem proportionate either. For instance, following the amendments to the [Law on Health](#) (Article 209), a person violating anti-epidemic measures for the first time, such as not wearing a mask, receives a fine between 300 and 1000 leva (150 and 500 EUR) in a country in which the [gross median earnings in September 2020](#) were roughly 700 EUR.

Sites dedicated to legal news [report](#) that citizens have managed to challenge such fines in court, but the reason was anchored in the fact that the order making the mask mandatory was not published in the State Gazette. A brave judge concluded that “the poor legislative technique and the complete misunderstanding of the rule-making process by the executive branch” forced the court to choose between the rule of law and the enforcement of anti-epidemic measures. However, considering Borissov’s progressive [capture of the courts](#), such judges are rather the exception in Bulgaria.

[Practicing lawyers](#) draw attention to the fact that some of these fines have been annulled by courts because of procedural violations – for example in one case, a person was fined by the police after the order was no longer in force. This shows that even law enforcement has trouble navigating the executive orders.

What Does the Future Hold?

Looking at the past year, the severest measures imposed in Bulgaria included bans on entry to Bulgaria for citizens of certain countries, the closure of educational institutions, restaurants, bars and shopping malls, the ban on cultural events (closure of cinemas, museums, etc.), the requirement that at least 50% of the personnel of businesses should work at a distance if possible, and the restriction of private events (weddings) to no more than 15 people.

One may safely assume that the government would have gone much further in its measures or possibly that the Borissov-dominated Parliament would have introduced

even more laws restricting human rights had it not been for another accident – [mass protests](#) against the corruption of Boyko Borissov which erupted in July 2020 after the Prosecutor's Office raided the Bulgarian Presidency. I have argued on multiple occasions that Bulgaria is [a rule of law crisis](#) in all but name, which is also corroborated by the [latest resolution](#) of 8 October 2020 on breaches of the rule of law and fundamental rights in Bulgaria by the European Parliament.

However, due to the anti-corruption protests, Borissov's government was pressured to focus on its own political survival, including diverse deceptive techniques to deviate attention and attempt to appease the masses, such as pretending to [propose a new Constitution](#) – an initiative which was recently abandoned after it served its purpose to buy time for Borissov and to prevent early elections.

In this light, the elections on 4 April 2021 are of pivotal importance for Bulgaria's rule of law. Borissov has built a framework for abusing the COVID-19 challenges for political benefits, so if he remains in power, he will surely take advantage of it.

** The article is current as of January 2021*

